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**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY  
LOS ANGELES, CA

MIAMI, FL

CHICAGO, IL

STAMFORD, CT

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January 7, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W.  
TW-A325  
Washington, DC 20554

Re: Assessment and Collection of Regulatory  
Fees For Fiscal Year 1999  
MD Docket No. 98-200

Dear Ms. Salas:

Enclosed, please find for filing an original and four copies of Paging Network, Inc.'s ("PageNet") Comments in response to the Commission's MD Docket No. 98-200 In the Matter of Regulatory Fees for Fiscal Year 1999. An additional copy has also been included. Please date stamp and return the additional copy.

Respectfully submitted,



Paul G. Madison

PGM:cpa  
Enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

70090-103

JAN - 7 1999

In the Matter of )  
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Assessment and Collection Of )  
Regulatory Fees For Fiscal Year 1999 )

MD Docket No. 98-200

To: The Commission

**COMMENTS OF PAGING NETWORK, INC.**

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. §§ 1.415 and 1.419, hereby submits these Comments in response to the *Notice Of Inquiry* issued in the above-captioned docket.<sup>1</sup> In support of these Comments, the following is respectfully shown:

**I. Interest Of PageNet**

PageNet is a commercial mobile radio services ("CMRS") provider holding numerous paging, narrowband PCS, and 900 MHz Special Mobile Radio ("SMR") authorizations. PageNet, through its subsidiaries, provides traditional and advanced messaging services to over 10 million mobile units. PageNet is subject to substantial yearly regulatory fees and is interested, and qualified to comment, in this proceeding.

**II. CMRS Mobile Services And CMRS Messaging Services Should Not Be Combined Under A Single CMRS Fee Category.**

In the *NOI*, the Commission sought comment on SBC's proposal to combine the CMRS Messaging Services and the CMRS Mobile Services regulatory fee categories into a single CMRS fee category. The result of this combined category would be that two-way voice carriers and messaging carriers (not just narrowband PCS) would pay the same flat rate per unit

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<sup>1</sup> *Notice of Inquiry, Assessment And Collection Of Regulatory Fees For Fiscal Year 1999*, 63 FR 70090 (1998) ("NOI").

regulatory fee. SBC supports its proposal by asserting that regulatory symmetry, which SBC equates with a single CMRS fee category, is necessary to avoid any competitive advantage to narrowband PCS and specialized mobile radio ("SMR")<sup>2</sup> service over cellular and broadband PCS.<sup>3</sup>

A single CMRS fee category should not be adopted because: (1) the Commission has already determined that the differences between two-way mobile voice and messaging warrant different regulatory fees; (2) regulatory symmetry in the context of regulatory fees does not mean the same per unit fee for all CMRS services; and (3) a lesser per unit regulatory fee will not create a competitive advantage for messaging services.

In the context of regulatory fees, the Commission has already determined that the differences in the nature and regulation of messaging and two-way voice services warrant a different per unit regulatory fee.<sup>4</sup> The Commission determined that a reduced fee for messaging services was appropriate due to the quality of channels afforded messaging entities versus cellular providers and the fact that a majority of messaging carriers are authorized only to transmit one-way data messages whereas cellular providers operate systems providing two-way voice communications.<sup>5</sup> SBC offers no justification and adds nothing new to the record of the regulatory fee dockets that establishes a basis for reversal of the Commission's prior determination that messaging services should pay a lower regulatory fee on a per unit basis.

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<sup>2</sup> The 800 and 900 MHz SMR services are currently subject to the same regulatory fee category as cellular and broadband PCS. Narrowband PCS is subject to the CMRS Messaging Services regulatory fee.

<sup>3</sup> *NOI*, 63 FR at 70091 (1998).

<sup>4</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17184 (1997).

<sup>5</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13544 (1995).

Combining CMRS Messaging Services and CMRS Mobile Services into one fee category would ignore a fundamental difference between messaging services and two-way voice services.<sup>6</sup> A combined fee category is inappropriate because it will not take into account the substantial difference in per unit revenues, thus creating an inequity for messaging carriers. A single flat-rate regulatory fee will have a disproportionate regulatory impact on messaging service providers. For example, assuming messaging service carriers derive revenues of \$8.00 per feeable unit per month and two-way voice service carriers derive revenues of \$50.00 per feeable unit per month, based on a \$0.29 regulatory fee, messaging service carriers would pay 3.625% of their monthly revenues per unit in fees as opposed to .58% by two-way voice service carriers.

As noted above, regulatory symmetry does not equate to carriers paying the same per unit regulatory fee regardless of the service offered or the spectrum utilized. The assumption that the per unit fee must be the same for the purposes of regulatory symmetry does not take into account that messaging carriers serve a greater number of subscribers on vastly less spectrum than broadband two-way voice systems and do not realize the level of revenues on a per subscriber basis.<sup>7</sup> The current CMRS Messaging Services fee category takes this fact into account and the mandate of regulatory symmetry is therefore properly served. Finally, the Commission has

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<sup>6</sup> The Commission noted when creating the dual CMRS regulatory category, the paging industry is very competitive and generally has low profit margins compared to real-time two-way voice services. *I.d.* at 13544.

<sup>7</sup> PageNet is building systems that could serve in the range of 250,000 units on 25 kHz of spectrum. If PageNet had the spectrum allotted for a broadband PCS license, PageNet could serve 30,000,000 units with that broadband PCS license. It is clear that symmetry in the context of regulatory fees must take into account the efficient use of the messaging spectrum by the messaging carrier.

previously found that not all similar services must have identical technical and operational rules<sup>8</sup> and has refrained from imposing certain regulatory obligations on messaging carriers to which the carriers that provide real-time two-way voice are subject , *e.g.*, number portability, E911 obligations, mandatory resale obligations.<sup>9</sup>

The *NOI* indicated that SBC asserted that the lower per unit regulatory fee placed cellular and broadband PCS carriers at a competitive disadvantage to narrowband PCS and possibly other messaging carriers. A lower per unit regulatory fee for messaging services will not put cellular and broadband PCS carriers at a competitive disadvantage. What competitive advantage could a paging or narrowband PCS carrier have over a cellular or broadband PCS carrier when the former has 25 to 50 kHz of spectrum per license and the latter 25 to 30 MHz of spectrum per license?<sup>10</sup>

The Commission has already rejected the contention that all CMRS licensees should pay the same per unit regulatory fee.<sup>11</sup> The Commission stated that the statutory scheme makes it plain that Congress in enacting the regulatory fee program contemplated that the Commission's fee levels would recognize the benefit of the spectrum authorized to licensees in the various

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<sup>8</sup> *CMRS Third Report and Order*, 9 FCC Rcd 7988 (1994).

<sup>9</sup> *In re Telephone Number Portability, Third Report and Order*, 13 FCC Rcd 11701 (1998), *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking* 11 FCC Rcd 9462 (1996), *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems* 12 FCC Rcd 22665 (1997). The fact that CMRS messaging carriers are subject to less regulation than the two-way mobile voice providers means that the FCC would generally expend less of its resources on messaging services regulation.

<sup>10</sup> Customers seeking real time mobile voice communications services must acquire cellular or broadband PCS services. Customers seeking messaging services are not obliged to acquire messaging services. Cellular and broadband PCS services allow messaging services in addition to two-way voice services, the converse is not true for messaging services.

<sup>11</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, 63 FR 35847, 35854 (Jul. 1, 1998).

services.<sup>12</sup> Combining paging services and two-way real voice services under one CMRS fee would ignore the benefit of the spectrum authorized to the licensees. Furthermore, the Commission found that separating CMRS Mobile Services from CMRS Messaging Services into two separate fee categories benefited the public interest.<sup>13</sup> In light of the foregoing, the Commission should maintain the separate and distinct CMRS Messaging Services and CMRS Mobile Services fee categories.

### **III. Regulatory Fees Within The CMRS Mobile Service Category Should Distinguish Between Two-Way Voice And Non-Voice Services**

Under the CMRS Mobile Services fee category, the Commission assesses fees for the services that possess sufficient base and mobile spectrum for carriers to provide real-time two-way voice services. Unfortunately, this service fee category only anticipates carriers offering voice services and does not appropriately distinguish between voice and non-voice services. As such, under the current structure of the CMRS Mobile Services fee category, carriers that choose to provide non-voice services may be subject to a disproportionate share of the overall CMRS Mobile Service regulatory fees because non-voice systems will typically support vastly greater numbers of customers than voice systems.<sup>14</sup>

PageNet proposed that 900 MHz SMR systems that are not offering real time two-way voice services should be included in a new reduced fee sub-category in the CMRS Mobile

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<sup>12</sup> *I.d.* citing 47 U.S.C. 159(g).

<sup>13</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd at 17184 (1997).

<sup>14</sup> Advanced messaging networks can support in excess of 250,000 customers with 25 kHz of spectrum. Some broadband carriers have as much as 30 MHz of spectrum over which to offer messaging or other mobile services.

Services.<sup>15</sup> This new sub-category would account for the differences between network efficiency and regulatory burdens of non-voice services and voice services. It should be emphasized that, within these categories, the Commission has already determined that distinctions based on services offered and network capability are appropriate. Specifically, in the context of SMR, the Commission has determined that certain “covered” SMR operators who offer real-time two-way voice services should be subject to greater regulatory requirements than “non-covered” SMR operators whose networks do not have real time voice capability.<sup>16</sup> Because the regulatory burdens that are placed on non-covered SMR carriers are less than those placed on covered SMR carriers,<sup>17</sup> the costs incurred by the Commission in regulating non-covered SMR carriers are correspondingly less. Having already acknowledged that the differences between real-time two-way voice services are significant enough to warrant different levels of regulation, the Commission should create a reduced regulatory fee sub-category for non-voice networks and services within the CMRS Mobile Services fee category.

Finally, because the non-voice services provided on the broadband spectrum likely will be similar to messaging services, the CMRS Messaging Service Fee could be used as a proxy. Otherwise, in order to determine the reduced fee, the Commission would have to calculate the burden of non-voice networks and services in the broadband services while crediting the non-voice networks for their ability to serve vastly greater number of units.

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<sup>15</sup> PageNet understands that other proposals to reduce regulatory fees for 900 MHz services were submitted to the Commission. PageNet supports proposals that would reduce regulatory fees in this service category.

<sup>16</sup> As the Commission authorizes new mobile services, it is clear that regulatory fees should be based on core service offerings and not spectrum category.

<sup>17</sup> *See, e.g.*, Section 52.31 of the Commission’s Rules (number portability). Covered SMR carriers are also subject to enhanced 911 requirements. *See* Revision of the Commission’s Rules to Ensure Capability with Enhanced 911 Emergency Calling Systems, 12 FCC Rcd 22665 (1997).

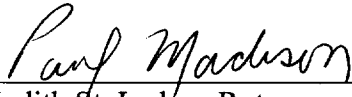
The creation of a modified fee structure for non-voice services will ensure that carriers offering such services are not required to cover a disproportionate share of the regulatory burden within the CMRS Mobile Services fee category. Distinguishing between services and network capabilities within the CMRS Mobile Services regulatory fee category will not diminish the overall regulatory fee contributions of this category and should only have a *de minimis* impact on carriers that do provide real-time two-way voice services.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should maintain the separate and distinct CMRS Mobile Services and CMRS Messaging Services fee categories and create a reduced fee sub-category in the CMRS Mobile Services to include efficient non-voice services and networks.

Respectfully submitted,

**PAGING NETWORK, INC.**

By:   
Judith St. Ledger-Roty  
Paul G. Madison  
**KELLEY DRYE & WARREN LLP**  
1200 19<sup>th</sup> Street, N.W. Suite 500  
Washington, D.C. 20036  
(202) 955-9600

Its Attorneys

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